

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2539

Introduced by Assembly Member Ting

February 21, 2014

~~An act to add Section 114365.7 to the Health and Safety Code, relating to retail food operations. An act to amend Section 114371 of the Health and Safety Code, relating to certified farmers' markets.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2539, as amended, Ting. ~~Retail food; cottage food operators. Certified farmers' markets.~~

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities and various types of food venues, including specified food safety and sanitation requirements for certified farmers' markets governing food preparation, storage, and sampling, among other things. Existing law provides that local health agencies are primarily responsible for enforcing the code, but requires the State Department of Public Health to provide technical assistance, training, standardization, program evaluation, and other services to the local health agencies as necessary to ensure the uniform interpretation and application of the code, and to adopt regulations to implement and administer the code. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

This bill would revise the requirements imposed on certified farmers' markets. Among other things, the bill would require that foods that are ordinarily consumed without prior washing by the consumer, and that

are being sold on a bulk or nonprepackaged basis, be displayed and dispensed by the producer from covered containers. The bill would provide that trimming whole produce for sale is not food preparation for purposes of a provision generally prohibiting food preparation at certified farmers' markets. The bill would require that each food sample be distributed by the producer individually and directly to each consumer. The bill would require that all meat products offered for sale be transported, stored, displayed, and maintained at a temperature of 41 degrees Fahrenheit or colder, would prohibit a product from being stored under conditions where it is sitting or floating in melted ice water, and would require that all meat products be stored in dedicated species-specific coolers or freezers to reduce the risk of cross-contamination from one species to another. The bill would also prohibit smoking within 25 feet of the common commerce area, as described, of a certified farmers' market. By imposing new enforcement requirements on local health agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities. Existing law provides that local health agencies are primarily responsible for enforcing these provisions, but requires the State Department of Public Health to provide technical assistance, training, standardization, program evaluation, and other services to the local health agencies as necessary to ensure the uniform interpretation and application of the code, and to adopt regulations to implement and administer the code. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.~~

~~The code regulates, among other types of food venues, certified farmers' markets and cottage food operations, respectively. The code sets forth specified requirements for certified farmers' markets relating~~

to food safety and sanitation. The code also requires a cottage food operation, as defined, to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales, and requires a cottage food operation to either register with or obtain a permit from the local enforcement agency to open for business, as specified.

This bill would require the department to develop guidelines to protect the public health and safety in food handling and to ensure that uniform standards apply to cottage food operations at certified farmers' markets. The bill would require all local environmental health departments to utilize these guidelines in interpreting and enforcing regulations governing cottage food sales at certified farmers' markets. The bill would also require the department to consult with stakeholders in developing the guidelines, including local environmental health officers and certified farmers' market managers. By imposing new enforcement requirements on local health agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 114371 of the Health and Safety Code is
2 amended to read:
3 114371. Certified farmers' markets shall meet all of the
4 following requirements:
5 (a) All food shall be stored at least six inches off the floor or
6 ground or under any other conditions that are approved. *Foods*
7 *including, but not limited to, flavored nuts and dried fruits that*
8 *are ordinarily consumed without prior washing by the consumer,*
9 *and that are being sold on a bulk or nonprepackaged basis, shall*
10 *be displayed and dispensed by the producer from covered*
11 *containers.*

(b) Food preparation is prohibited at certified farmers' markets with the exception of food samples. *Trimming whole produce for sale shall not be considered food preparation.* Distribution of food samples may occur provided that the following sanitary conditions exist:

(1) Samples shall be kept in ~~approved, clean, covered containers~~ *clean and covered containers intended for use with foods.*

(2) All food samples shall be distributed by the producer in a sanitary manner. *Each sample shall be distributed by the producer individually and directly to each consumer. No consumer self-serving of samples shall be allowed.*

(3) Clean, disposable plastic gloves shall be used when cutting food samples.

(4) Food intended for sampling shall be washed or cleaned in another manner of any soil or other material by potable water in order that it is wholesome and safe for consumption.

(5) Notwithstanding Section 114205, potable water shall be available for handwashing and sanitizing as approved by the enforcement agency.

(6) Potentially hazardous food samples shall be maintained at or below 45°F and shall be disposed of within two hours after cutting.

(7) Wastewater shall be disposed of in a facility connected to the public sewer system or in a manner approved by the enforcement agency.

(8) Utensils and cutting surfaces shall be smooth, nonabsorbent, and easily cleanable, or single-use articles shall be utilized. *The producer shall maintain an adequate supply of clean replacement utensils readily available at the site at the time of use.*

(c) Approved toilet and handwashing facilities shall be available within 200 feet travel distance of the premises of the certified farmers' market or as approved by the enforcement officer.

(d) No live animals, birds, or fowl shall be kept or allowed, *and no individual shall bring a live animal, bird, or fowl, within 20 feet of any area where food is stored or held for sale within a certified farmers' market.* This subdivision does not apply to guide dogs, signal dogs, or service dogs when used in ~~the manner specified in Section 54.1 of the Civil Code~~ *accordance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28 of*

1 *the Code of Federal Regulations. All guide dogs, signal dogs, and*
2 *service dogs shall be used and properly identified in accordance*
3 *with Section 54.1 and subdivision (b) of Section 54.2 of the Civil*
4 *Code, and Sections 30850, 30851, and 30852 of the Food and*
5 *Agricultural Code.*

6 (e) All garbage and refuse shall be stored and disposed of in a
7 manner approved by the enforcement officer.

8 ~~(f) Notwithstanding Chapter 10 (commencing with Section~~
9 ~~114294),~~

10 (f) *Smoking of cigarettes, cigars, pipe tobacco, and other*
11 *nicotine products shall not be permitted within 25 feet of the*
12 *common commerce area comprised of sales personnel and*
13 *shopping customers of the certified farmers' market.*

14 (g) *Permitted and licensed vendors selling food adjacent to, and*
15 *under the jurisdiction and management of, a certified farmers'*
16 *market may store, display, and sell from a table or display fixture*
17 *apart from the mobile food facility in a manner approved by the*
18 *enforcement agency. This section shall not apply to temporary*
19 *food facilities engaging in food preparation.*

20 (h) (1) *Individually permitted and licensed vendors selling*
21 *bakery goods or prepackaged foods, but not engaging in food*
22 *preparation, may be operated in conjunction with, adjacent to,*
23 *and under the auspices of a certified farmers' market if they are*
24 *in compliance with Section 114381.1. However, the operator of*
25 *the certified farmers' market shall be responsible for ensuring*
26 *compliance by those vendors with the applicable provisions of this*
27 *code.*

28 ~~(g)~~

29 (2) *Temporary food facilities engaging in food preparation*
30 *may be a component part of an activity operated as a separate*
31 *community event adjacent to, and in conjunction with, certified*
32 *farmers' markets that are operated as a community event markets.*
33 *The organization in control of the community event at which one*
34 *or more of these temporary food facilities operate shall comply*
35 *with Section 114381.1.*

36 (i) *All meat products offered for sale shall be transported,*
37 *stored, displayed, and maintained at a temperature of 41 degrees*
38 *Fahrenheit or colder. The temperature holding capabilities of the*
39 *chest and cooler storage containers used shall be sufficient to*
40 *maintain safe product temperatures. Storage containers*

1 *manufactured solely from the polystyrene foam insulation known*
2 *as Styrofoam™ are prohibited. A product shall not be stored under*
3 *conditions where it is sitting or floating in melted ice water. All*
4 *meat products shall be stored in dedicated species-specific coolers*
5 *or freezers to reduce the risk of cross-contamination from one*
6 *species to another.*

7 *SEC. 2. No reimbursement is required by this act pursuant to*
8 *Section 6 of Article XIII B of the California Constitution for certain*
9 *costs that may be incurred by a local agency or school district*
10 *because, in that regard, this act creates a new crime or infraction,*
11 *eliminates a crime or infraction, or changes the penalty for a crime*
12 *or infraction, within the meaning of Section 17556 of the*
13 *Government Code, or changes the definition of a crime within the*
14 *meaning of Section 6 of Article XIII B of the California*
15 *Constitution.*

16 *However, if the Commission on State Mandates determines that*
17 *this act contains other costs mandated by the state, reimbursement*
18 *to local agencies and school districts for those costs shall be made*
19 *pursuant to Part 7 (commencing with Section 17500) of Division*
20 *4 of Title 2 of the Government Code.*

21 ~~SECTION 1. Section 114365.7 is added to the Health and~~
22 ~~Safety Code, to read:~~

23 ~~114365.7. The department shall develop guidelines to protect~~
24 ~~the public health and safety in food handling and to ensure that~~
25 ~~uniform standards apply to cottage food operations at certified~~
26 ~~farmers' markets. All local environmental health departments shall~~
27 ~~utilize the guidelines in interpreting and enforcing regulations~~
28 ~~governing cottage food sales at certified farmers' markets. The~~
29 ~~department shall consider the unique characteristics of the cottage~~
30 ~~food industry in developing guidelines that differ from the~~
31 ~~structural and operational requirements for produce vendors and~~
32 ~~retail food vendors at certified farmers' markets. The department~~
33 ~~shall consult with stakeholders in developing the guidelines,~~
34 ~~including local environmental health officers and certified farmers'~~
35 ~~market managers.~~

36 ~~SEC. 2. If the Commission on State Mandates determines that~~
37 ~~this act contains costs mandated by the state, reimbursement to~~
38 ~~local agencies and school districts for those costs shall be made~~
39 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
40 ~~4 of Title 2 of the Government Code.~~

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